

### **REMARKS**

Claims 1 and 13 are canceled. Claims 8-12, 14-15 and 20-24 are withdrawn. No claims are amended. Claims 2-7, 16-19 and 25-36 are currently pending.

As a predicate to consideration of the claims presented herein:

Independent claims 25 and 31 both recite, in pertinent part, an assembly for facilitating a fixed mounting of roof membrane seam plates upon an underlying roof decking substructure by means of fasteners, comprising:

“a substrate..., and a plurality of seam plates..., said seam plates being affixed to said substrate *independently* of the fasteners...”

Claim 2 depends from claim 25 and recites, in pertinent part:

“a substrate...; and a plurality of seam plates...affixed to said substrate...[and] disposed...at predeterminedly spaced positions spaced along said longitudinal extent of said substrate which *correspond to the predetermined distances defined between the plurality of spaced crest portions* of the underlying roof decking substructure so as to *ensure said plurality of seam plates can be fixedly secured to the plurality of spaced crest portions...*”

Claim 4 depends from claim 25 and further recites, in pertinent part:

“said substrate has a substantially *C-shaped cross-sectional configuration* comprising an upper planar member disposed atop said plurality of seam plates, and a pair of lower planar flap-type members folded inwardly from opposite side edge portions of said upper planar member.”

The pending claims are rejected as obvious over US 4382353 to Kelly in view of US 4787188 to Murphy. According to the Examiner, Kelly discloses each and every element of the claims except that the assembly comprises a plurality of seam plates fixedly secured by fasteners so as to ensure the proper fixation of

the seam plates to the underlying roof decking substructure, whereby the fixation of the environmental membranes upon the underlying roof decking substructure will be ensured. Instead, the Examiner relies upon Murphy for disclosure of a seam plate for securing a roof membrane to a roof deck. See for example, Office Action of March 11, 2009, page 7.

Applicant respectfully traverses.

- **The Kelly-Murphy combination fails to disclose seam plates affixed to a substrate independently of fasteners.**

In his rejection of claims 25 and 31, the Examiner has completely ignored the limitation that the seam plates are “affixed to [the] substrate *independently* of the fasteners”, as recited in each of the independent claims.

Neither Kelly nor Murphy teaches, suggests or discloses the recited relationship between the seam plates and substrate.

Kelly discloses a furring technique wherein a metal or wooden furring strip is affixed to a roof structure via a screw. The furring strip is not configured for use with a seam plate at all (whether independently affixed or not), nor is such a combination or affixed relationship suggested or implied.

Murphy discloses individual seam plates that are completely independent from any sort of “strip” or substrate. Likewise, Murphy fails to suggest or imply any such relationship between its seam plates and a substrate of any kind. Consequently, one of ordinary skill in the art would never look to Murphy to improve the technique of Kelly.

Notably, the recited seam plate-substrate affixed relationship is not inconsequential. The seam plates being affixed to the substrate independently of fasteners provides a convenient and efficient means for packaging and transporting the assembly, as well as applying and spacing the seam plates to a roof substructure prior to attachment of the plates to the substructure via fasteners.

Because neither Kelly nor Murphy discloses an affixed relationship between seam plates and a substrate that is independent of fasteners, even if it were obvious to look to Murphy to improve Kelly, independent claims 25 and 31 are not obvious over the combination. The remaining claims depend, either directly or indirectly, from claims 25 and 31, and are therefore allowable as a matter of law.

- **The Kelly-Murphy combination fails to disclose seam plates affixed to a substrate at predetermined spaces that correspond with the spaces between crest portions of a corrugated roof substructure.**

As noted in detail above, amended independent claim 2 recites the element of predeterminedly spaced seam plates that correspond to the spacing of the crest portions of a corrugated substructure.

Applicant first notes that, in rejecting claim 2, the Examiner has already conceded that Kelly does not disclose a plurality of seam plates fixedly mounted upon said substrate *at predeterminedly spaced positions which correspond to the predetermined distances defined between the plurality of spaced crest portions of the underlying roof decking substructure*. See Office Action of March 11, 2009, pages 4-5. Further, the Examiner only asserts that Murphy discloses a seam plate that is similar in structure to those recited. The Examiner did not assert that Murphy discloses this additional element. Seemingly, the Examiner completely ignored the recited limitation that the seam plates are positioned to correspond to spacing of the substructure crest portions.

As described in detail in the Background of the specification, ensuring that each seam plate is aligned with a crest portion of the roof decking substructure is critical to effectively fixing roof decking membranes. Affixing seam plates along a substrate at the precise spacing recited in claim 2 solves this critical issue in the field.

Murphy only discloses a seam plate that can be used to secure a roof membrane. Murphy makes no mention or suggestion of a roof substructure comprising a series of separated crests nor a substrate, let alone spacing its seam plates along a substrate in positions that correspond to the spaced positions of substructure crests.

Neither Kelly nor Murphy teach, disclose or suggest spacing seam plates on a substrate in predetermined positions that correspond with the predetermined positions of spaced crest portions of a roof substructure. Consequently, even if it were obvious to improve Kelly's disclosure by incorporating Murphy's seam plates (which obviousness applicant expressly denies), claim 2 is allowable over the cited combination.

- **At least claims 4-7 are allowable because the Kelly-Murphy combination fails to disclose or suggest a substrate with a *substantially C-shaped cross sectional configuration* and such a configuration is entitled to patentable weight.**

Further, in rejecting claims 4, 6 and 7, the Examiner argues that Kelly in view of Murphy disclose the recited assembly with exception to the substrate having a substantially C-shaped cross sectional configuration. The Examiner proffers that the recited C-shaped cross sectional configuration is an "obvious design choice" and alleges that the "criticality of this feature" has not been disclosed. Applicant respectfully traverses.

Applicant contends that the Examiner has improperly afforded no patentable weight to the C-shaped cross sectional configuration recited in claim 4. As noted above, neither Kelly nor Murphy nor their combination discloses an assembly wherein seam plates are affixed to a substrate independent of fasteners. The C-shape of the substrate is not simply a "design choice", as suggested by the Examiner. Rather, it is one of the preferred means of effecting this independent affixation.

As shown in Figure 7 and discussed in paragraphs 35-37 of the description, the upper planar member extends across the top surface of the seam plate and two opposing lower planar members are folded inward from near the outer edges of the seam plate. As can be seen in Figure 7, the lower planar members provide support to the seam plate in the direction opposite from the upper planar member (i.e., the opposite edges of the seam plate are generally loosely "sandwiched" between the upper planar member and the lower planar members.).

This C-shaped configuration is one convenient means of cost effectively affixing a plurality of seam plates to the substrate for packaging and transporting the assembly. Further, after attaching the seam plates to roof membranes via fasteners, a user can rather easily remove a softer substrate, such as a thermoplastic film, from the seam plates by pulling the substrate in the direction away from the roof membrane. This removal of the substrate can be preferred to improve the aesthetics of the roof structure.

The Examiner has already acknowledged that neither Kelly nor Murphy disclose the recited C-shaped configuration. See Office Action of March 11, 2009, page 6. As an additional matter, there would be no reason for one skilled in the art to even contemplate altering the Kelly furring strip (which the Examiner cites as allegedly equivalent to the recited substrate) to be configured with a C-shaped cross section. The disclosed furring strip is a rigid metallic or wooden material that is used to cover a seam flushly and is screwed directly into an underlying decking. One would never expect a C-shaped furring strip to enhance the Kelly furring technique. If anything, the flush seal taught by Kelly would be impaired by incorporating a strip with a C-shaped cross section instead of Kelly's flat strip.

Consequently, Kelly in view of Murphy can not render claim 4 obvious. Claims 5-7 depend from claim 4 and are therefore allowable as well.

- **At least claims 28 and 34 are allowable because the Kelly-Murphy combination fails to disclose or suggest a substrate that is a *tubular* member.**

The Examiner has completely ignored the limitation in claims 28 and 34 that the substrate be comprises a *tubular* member. For the reasons articulated above with respect to the C-shaped configuration recited in claims 4-7, the tubular configuration is not inconsequential. Therefore, the tubular configuration is entitled to patentable weight. Neither Kelly, Murphy nor their combination teaches, discloses or suggests a substrate comprising a tubular member. Therefore, claims 28 and 34 are allowable.

- **At least claims 29, 30, 35 and 36 are allowable because the Kelly-Murphy combination fails to disclose or suggest a substrate that is a *flexible* and can be folded or rolled.**

Claims 29 and 35 recite that the substrate comprises a *flexible* material so that the substrate can be rolled into a coil. Similarly, claims 30 and 36 recite that the substrate comprises a *flexible* material so that the substrate can be folded into a pleated array.

As articulated in the above sections, the only embodiments of Kelly's furring strip (the element that is cited as allegedly equivalent to the recited substrate) are *rigid*. See, for example, column 2, lines 24-25.

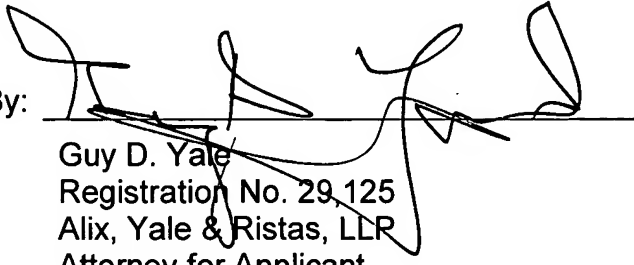
Consequently, the cited combination of Kelly and Murphy can not render claims 29, 30, 35 and 36 obvious.

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For at least the reasons stated herein, pending claims 2-7, 16-19 and 25-36 are not obvious over Kelly in view of Murphy. Applicant respectfully requests that the Examiner withdraw his rejection and pass the pending claims to issue.

Respectfully submitted,

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